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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

11 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
a California not-for-profit)
12 religious corporation,)
13 Plaintiff,)
14 vs.)
15 GERALD ARMSTRONG; MICHAEL WALTON;)
THE GERALD ARMSTRONG CORPORATION,)
16 a California for-profit)
corporation; DOES 1 through 100,)
17 inclusive,)
18 Defendants.)
19 _____)

No. 157 680

ARMSTRONG'S
OPPOSITION TO DEMURRER
TO FIRST AMENDED
CROSS-COMPLAINT

Date: March 25, 1994
Time: 9:00 a.m.
Dept: One
Trial Date: 9/29/94

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1 I. INTRODUCTION

2 Cross-defendant Church of Scientology International
3 ("Scientology") bases its demurrer on two primary arguments.
4 First, it contends that cross-complainant Armstrong ("Armstrong")
5 cannot state a claim for abuse of process because the claim is
6 outside the applicable statute of limitations and because it is
7 within the law of privilege. Second, Scientology contends that
8 the demurrer must be sustained because there is another lawsuit
9 pending between Armstrong and it on the same cause of action.

10 Armstrong's response to the first argument is that the
11 underlying lawsuit in this case is litigation which constitutes an
12 abuse of process because it is part of a larger and ongoing scheme
13 to use the legal system to destroy Armstrong. His response to the
14 second argument is that his complaint that the underlying lawsuit
15 constitutes an abuse of process cannot be the subject of
16 litigation previously existing.

17 II. STATEMENT OF FACTS

18 That scheme of which the abuse of process alleged herein is a
19 part is based on two essential policies that are integral features
20 of Scientology's character, particularly as such character relates
21 to Scientology's conduct toward Armstrong. The first such feature
22 is Scientology's fair game policy which directs that one who
23 Scientology deems to be a "suppressive person" "May be deprived of
24 property or injured by any means by any Scientologist without
25 discipline of the Scientologist. May be tricked, sued or lied to
26
27
28

1 or destroyed." (FAC at ¶ 12) ¹/ Armstrong has long been deemed
2 a "suppressive person." (FAC at ¶ 16) The second feature is its
3 policy of employing litigation as a tool of retribution and
4 destruction. (FAC at ¶ 52)

5 "The purpose of the suit is to harass and discourage
6 rather than to win. [¶] The law can be used very
7 easily to harass, and enough harassment on somebody who
8 is simply on the thin edge anyway...will generally be
9 sufficient to cause his professional decease. If
10 possible, of course, ruin him utterly. "

11 (FAC at ¶ 53)

12 -- To further these two essential features in its campaign to
13 destroy Armstrong, Scientology has sued Armstrong four times in
14 the last 12 years. (FAC at ¶¶ 18, 47, 48, 49)

15 Integral to its strategy of fair game and retributive
16 litigation was Scientology's scheme to compromise and buy-off
17 Armstrong's original lawyer, Michael Flynn. (FAC at ¶ 23) Flynn
18 represented many persons who were suing Scientology (FAC at 21)
19 and himself was the subject of an ongoing implementation of fair
20 game. (FAC at ¶ 22) In addition to Armstrong, Flynn's clients
21 included Laurel Sullivan, Edward Walters, Bill Franks, and Howard
22 ("Homer") Schomer. (FAC at ¶ 21) Sullivan, Walters and Schomer
23 were witnesses in the Armstrong I litigation and were judicially
24 credited by the Honorable Paul G. Breckenridge, Jr. as having been
25 believable. In his decision, he stated:

26 _____
27 ¹ "FAC" as used herein refers to cross-complainant
28 Armstrong's First Amended Cross-Complaint which is the subject of
the instant Demurrer.

1 As indicated by its factual findings, the court finds
2 the testimony of Gerald and Jocelyn Armstrong, Laurel
3 Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison,
4 Kima Douglas, and Homer Schomer to be credible, extremely
5 persuasive and the defense of privilege or justification
6 established and corroborated by this evidence . . . In all
7 critical and important matters, their testimony was precise,
8 accurate, and rang true. The picture painted by these former
9 dedicated Scientologists, all of whom were intimately
10 involved [with the highest echelons of power in] the
11 Scientology Organization, is on one hand pathetic, and on the
12 other, outrageous. Each of these persons literally gave
13 years of his or her respective life in support of a man, LRH
14 [L. Ron. Hubbard], and his ideas. Each has manifested a
15 waste and loss or frustration which is incapable of
16 description. [Emphasis added.]

17 (Request for Judicial Notice, Exhibit A at p. 7:9-26)

18 The same witnesses testified in Lawrence D. Wollersheim v.
19 Church of Scientology of California, Los Angeles Superior Court
20 Case No. C 332027 (Request for Judicial Notice, Exhibit B at ix,
21 xiii) in which on July 22, 1986 the jury awarded a verdict in
22 Wollersheim's behalf in the amount of \$30,000,000.00. (Request
23 for Judicial Notice, Exhibit C at 14,869-14,870)

24 Sullivan, Franks, Walters, Schomer and Armstrong also
25 testified in Julie Christofferson v. Scientology, Circuit Court of
26 the State of Oregon, Multnomah County, No. A7704-05184, in which
27 the jury had awarded a verdict in Christofferson's behalf in the
28 amount of \$39,000,000 in 1985. (FAC at ¶¶ 29, 30, 31, 32, 34)

In 1986 Scientology offered Mr. Flynn a lump sum of several
million dollars to settle all the Scientology cases in which he
had a role provided that he get Sullivan, Walters, Schomer,
Armstrong, and others to sign certain settlement contracts. (FAC
at ¶ 26) ²/

² At this time, Judge Breckenridge's June 20, 1984
decision in Armstrong I had been rendered (FAC at ¶ 20), and
(continued...)

1 Such settlement contracts included provisions requiring
2 complete silence regarding Scientology-related experiences, non-
3 assistance to adverse parties, non-disclosure of settlement
4 conditions, prohibition of sworn testimony and avoidance of
5 service of process. (FAC at ¶ 35) Armstrong's agreement included
6 additional provisions which required him to take a dive on
7 Scientology's appeal of Judge Breckenridge's decision and to
8 collude with Scientology to obtain certain documents that
9 constituted evidence of a conspiracy among Scientology executives
10 and their attorneys to cover up criminal activity and to commit
11 frauds on the Internal Revenue Service and other governmental
12 agencies litigated and reported in United States v. Zolin, Case
13 No. CV 85-0440-HLH(Tx). (Ibid.) ^{3/}

14 _____
15 ²(...continued)

15 Armstrong's cross-complaint was set to be tried in early 1987.
16 Armstrong's cross-complaint, seeking damages for Scientology's
17 "fair game" conduct against him alleged that Scientology's conduct
18 against him included assault, harassment, attempted framing of
19 Armstrong in an alleged plot to "take over" Scientology, filing
20 false criminal charges with the Los Angeles District Attorney,
21 filing false criminal charges with the Boston office of the FBI,
22 filing false declarations, bringing contempt of court proceedings
23 on three occasions based on false charges, making false
24 accusations in internationally published media of crimes including
25 crimes against humanity, and culling and disseminating information
26 from Armstrong's supposedly confidential auditing (psychotherapy)
27 files. (FAC at ¶ 25)

22 ³ In United States v. Zolin (1989) 109 S.Ct. 2619, 105
23 L.Ed.2d 469 the Court addressed whether the attorney-client
24 privilege between Scientology and some of its attorneys should be
25 abrogated on the basis "that the legal service was sought or
26 obtained in order to enable or aid the client to commit or plan to
27 commit a crime or tort." (Id. at 2630, 105 L.Ed.2d at 489) In
28 Zolin, the Supreme Court reversed the Ninth Circuit's ruling in
United States v. Zolin (9th Cir. 1987) 809 F.2d 1411 that the
Government had not made a sufficient showing that there had been
"illegal advice ... given by [Scientology] attorneys to
[Scientology] officials" to invoke the crime-fraud exception to
the attorney-client privilege. Upon reversing and remanding, the
(continued...)

1 Armstrong's settlement contract was the result of his lawyer
2 having huge multiple conflicts of interest (FAC at ¶¶ 26, 27, 28),
3 engaging in undisclosed side-agreements with Scientology's counsel
4 without advising Mr. Armstrong thereof (FAC at ¶ 35), coercing
5 Armstrong by threatening to abandon him as a client and stripping
6 Armstrong of crucial witnesses, and representing to Armstrong that
7 the contractual provisions referenced above were not enforceable.
8 (FAC at ¶ 27) As part of the block settlement, Flynn also signed
9 an agreement not to represent Armstrong or others in litigation
10 adverse to Scientology in the future. (FAC at ¶ 37)

11 One purpose of the settlement contracts was, and is, to strip
12 Armstrong of his right to free speech as protected by the First
13 Amendment, strip the public of its First Amendment right to hear
14 accurate information about Scientology from informed sources, and
15 thereby to undermine free competition in the marketplace of ideas
16 (FAC at ¶ 38) and to eliminate any rebuttal of falsehoods
17 disseminated by Scientology in said marketplace of ideas. (FAC at

18 _____
19 ³(...continued)
20 Supreme Court ordered the Ninth Circuit to review partial
21 transcripts of the tape recording sought by the IRS in an criminal
22 investigation of Scientology to determine whether the crime-fraud
23 exception to the privilege applied. On remand, that Court held:

24 "The partial transcripts demonstrate that the purpose of
25 the [Mission Corporate Category Sort Out] project was to
26 cover up past criminal wrongdoing. The MCCA project involved
27 the discussion and planning for future frauds against the
28 IRS, in violation of 18 U.S.C. ¶ 371. [citation.] The
figures involved in MCCA admit on the tapes that they are
attempting to confuse and defraud the U.S. Government. The
purpose of the crime-fraud exception is to exclude such
transactions from the protection of the attorney-client
privilege."

29 (United States v. Zolin (9th Cir. 1990) 905 F.2d 1344, 1345. cert.
30 denied, Church of Scientology v. United States (1991) 111 S.Ct.
31 1309)

1 ¶ 39) 4/

2 Another purpose of the settlement contract was, and is, to
3 obtain an unfair advantage with respect to adversaries in various
4 pending and future litigation, and to control the availability of
5 evidence harmful to it in future litigation by the elimination of
6 Armstrong, Sullivan, Walters, Schomer, Franks and others as
7 witnesses in litigation (FAC at ¶ 39) because such persons know
8 that if they do not remain silent and cooperate with Scientology,
9 Scientology, based on the settlement contract would sue them in a
10 litigation war of attrition. 5/ (FAC at ¶ 53)

11
12 ⁴ Judge Sohigian recognized the value to the public of the
13 information possessed by Armstrong that Scientology is attempting
14 to suppress. He said: "The information (Armstrong's experiences
15 inside the Scientology organization) that's being suppressed in
16 this case, however, is information about extremely blame-worthy
17 behavior of [the Scientology organization] which nobody owns; it
18 is information having to do with the behavior of a high degree of
19 offensiveness and behavior which is meritorious in the extreme.
20 It involves abusing people who are weak. It involves taking
21 advantage of people who for one reason or another get themselves
22 enmeshed in this extremist view in a way that makes them unable to
23 resist it apparently. It involves using techniques of coercion."
24 (FAC at ¶ ¶ 47)

25 ⁵ For example, said former Scientologists knew that if
26 they violated the settlement contract they would have to deal with
27 the type of blitzkrieg described by United States District Court
28 Judge James M. Ideman on June 17, 1993 in the United States Court
of Appeals:

21 "[Scientology] has recently begun to harass my former
22 law clerk who assisted me on this case, even though she
23 now lives in another city and has other legal
24 employment. This action, in combination with other
25 misconduct by counsel over the years has caused me to
26 reassess my state of mind with respect to the propriety
27 of my continuing to preside over the matter. I have
28 concluded that I should not.

[Scientology's] non-compliance (with Court orders) has
consisted of evasions, misrepresentations, broken
promises and lies, but ultimately with refusal. As part
of this scheme to not comply [Scientology has]
undertaken a massive campaign of filing every
conceivable motion (and some inconceivable) (Judge

(continued...)

1 Scientology has used, and is using, the settlement contract
2 as the predicate to mount and continue a war of attrition against
3 Armstrong. Scientology's actual purpose in filing and prosecuting
4 Armstrong IV was, and is, to obstruct justice, suppress evidence,
5 assassinate Armstrong's reputation, retaliate against him for
6 exercising his rights, use the discovery process for gathering
7 intelligence on its enemies, and to make an example of Armstrong
8 so that knowledgeable witnesses who had been betrayed in the
9 settlement with the organization would continue to be scared into
10 silence. (FAC at ¶50) Armstrong IV is a part of Scientology's use
11 of litigation as war against its targeted "enemies" and our
12 justice system itself. ⁵/ Scientology's tactics in its use of

13 _____
14 ⁵(...continued)

15 Ideman's parens.) to disguise the true issues in these
16 pretrial proceedings. Apparently viewing litigation as
17 war, plaintiffs by this tactic have had the effect of
18 massively increasing costs to the other parties, and,
19 for a while, to the Court.
20 Yet it is almost all puffery -- motions without merit or
21 substance."

22 (FAC at ¶ 52)

23 ⁶ In this regard, review of the preliminary allegations of
24 the complaint herein is instructive when compared and contrasted
25 with the language employed by Judge Breckenridge in his June 1984
26 decision. In its verified complaint herein, Scientology alleges
27 that "Armstrong . . . sought, by both litigation and covert means,
28 to disrupt the activities of his former faith, displayed through
the years in an intense and abiding hatred for the Church, and an
eagerness to annoy and harass his former co-religionists by
spreading enmity and hatred among members and former members."
(Complaint at 2:4-9) Judge Breckenridge found that Armstrong "had
no enemies and felt ill will toward anyone in the Organization"
(Appendix, 12: 19-20) but nonetheless Scientology declared him to
be an "enemy" and was subject to fair game. (Request for Judicial
Notice at 11:8-11) Armstrong possessed "extensive knowledge of
the covert and intelligence operations carried out by the Church
of Scientology of California against its enemies (suppressive
persons), . . . [and] became terrified and feared that his life and
the life of his wife were in danger, and he also feared he would
be the target of costly and harassing lawsuits." (Appendix 14:6-
11) Armstrong was dedicated to the truth. (Appendix 9:21-11:26)

1 litigation as war include causing its opposition to do needless
2 work, needlessly driving up costs to its opposition, ignoring the
3 truth, senseless relitigation of already decided issues, perjury,
4 destruction and hiding of evidence, intimidation of witnesses,
5 intimidation of opposing counsel, and intimidation of judges. (FAC
6 at ¶ 51) The Armstrong IV complaint, and all of Scientology's
7 papers filed in the case, constitute an abuse of process because
8 it is intended to support Scientology's strategy of retributive
9 litigation in furtherance of its plan and scheme to obstruct
10 justice and to suppress evidence by making an example of Armstrong
11 in order to intimidate other persons who are knowledgeable about
12 Scientology from coming forward and speaking the truth. (FAC at ¶
13 53) It seeks to make an example of Armstrong so that
14 knowledgeable witnesses who had been betrayed in the settlement
15 with the organization would continue to be scared into silence.
16 (FAC at ¶ 57)

17 **III. THE DEMURRER MUST BE OVERRULED AS TO**
18 **ARMSTRONG'S CAUSE OF ACTION FOR ABUSE OF PROCESS**

19 **A. The Cause Of Action For Abuse Of Process Is**
20 **Not Barred By The One Year Statute Of Limitations**

21 As alleged, the conduct which took place prior to November
22 30, 1992, is to provide context for Armstrong's abuse of process
23 cause of action. Such pre-November 30, 1993, conduct is not
24 alleged in and of itself as an independent tort. ⁷ Such pre-

25 ⁷ Were the Court to be convinced by Scientology's
26 contention that the pre-November 1993 conduct was, in fact,
27 alleged as tortious separate from the second cause of action as
28 alleged herein, the Court could impose liability on a continuing
tort theory. "The continuing tort doctrine constitutes a pretty
well established exception to the usual rule that a statute of
limitations starts to run at the time of injury." (The American
(continued...))

1 November 1993 conduct is alleged, however, as providing the
2 infrastructure for the abuse of process cause of action which is
3 solely aimed at the conduct manifest in the instant lawsuit. The
4 cross-complaint, moreover, alleges that the complaint herein is
5 part of such scheme and this complaint herein specifically
6 constitutes an abuse of process. Since the complaint herein was
7 filed on July 23, 1993, the abuse of process cause of action
8 clearly falls within the one year statute.

9 **B. The Abuse Of Process Cause Of Action**
10 **Is Not Barred By The Law of Privilege**

11 1. **Since The Object Of Scientology's Fraudulent**
12 **Conveyance Action Is The Suppression And**
13 **Censorship Of Open Communication In Judicial**
14 **Proceedings, The Complaint Does Not Qualify For**
15 **Protection By The Litigant's Absolute Privilege**

16 The "broad application" given to Civil Code section 47 (b)
17 provided that it satisfy four conditions: the communication was
18 (1) made in a judicial or quasi-judicial proceeding;
19 (2) by litigants or other participants authorized by law;
20 (3) to achieve the objects of the litigation; and
21 (4) that have some connection or logical relation to the action.
22 (Silberg v. Anderson (1990) 50 Cal.3d 205, 211-212, 219)

23 ⁷(...continued)

24 Law of Torts, § 5:27 at 888-89.) Pursuant to this doctrine, a
25 plaintiff can bring an action against all of a defendant's
26 wrongful conduct, as long as any of it took place during the
27 limitation period. The continuing tort doctrine is applied where
28 "no single incident in a continuous chain of tortious activity can
'fairly or realistically be identified as the cause of significant
harm' [making it] proper to regard the cumulative effect of the
conduct as actionable." (Page v. United States (D.C.Cir. 1984)
729 F.2d 818, 821-822 quoting Fowkes v. Pennsylvania R.R. (3rd
Cir.1959) 264 F.2d 397, 399) The doctrine is intended to prevent
a person from acquiring a right to continue to reap benefits from
previous tortious conduct. (Page, supra, 729 F.2d at 822)

1 Before discussing Scientology's failure to satisfy the third
2 element herein, Armstrong will address the manner in which the
3 allegations of the cross-complaint describe behavior that strikes
4 at the very heart of the policy reasons which the California
5 Supreme Court has justified the litigant's privilege to be
6 "absolute."

7 Certain essential values, defined as "policy" by the
8 California Supreme Court, support the rule that if the four
9 conditions are satisfied, the judicial privilege provides absolute
10 protection. (Id. at p. 215) Whenever the scope of the privilege
11 that the court designates to be "absolute" includes conduct that
12 is harmful, the court's protection can extend to wrongful abuse
13 and exploitation. Therefore, an absolute privilege can "protect
14 the shady practitioner" (Id. at p. 214) such as an attorney who
15 "seeks to deceive a party into relying on an expert by
16 misrepresenting an expert's impartiality." (Id. at p. 213) This
17 judicially struck balance values the untrammelled ability to protect
18 "the honest one [from having to be] concerned with subsequent
19 derivative actions" (Id. at p. 214) over the "occasional 'unfair'
20 result." (Id. at p. 213)

21 Similarly, the privilege promotes and encourages

22 "'open channels of communication and the presentation of
23 evidence' in judicial proceedings." [Citation] A
24 further purpose of the privilege 'is to assure utmost
25 freedom of communication between citizens and public
26 authorities whose responsibility is to investigate and
27 remedy wrongdoing.' [Citation] Such open communication
28 is 'a fundamental adjunct to the right of access to
judicial ... proceedings.' [Citation] Since the
'external threat of liability is destructive of this
fundamental right and inconsistent with the effective
administration of justice' [Citation], courts have
applied the privilege to eliminate the threat of
liability for communications made during all kinds of

1 truth seeking proceedings: judicial, quasi-judicial,
2 legislative and other official proceedings."

3 (Ibid.)

4 The "occasional unfair result" is outweighed by keeping
5 "witnesses ... free from the fear of protracted and costly
6 lawsuits which otherwise might cause them either to distort their
7 testimony or refuse to testify altogether" (Id. at p. 214) in
8 order that "the paths that lead to the ascertainment of truth
9 should be left as free and as unobstructed as possible." (Ibid.)

10 The gravamen of the cross-complaint is that by engineering
11 the subversion of the lawyer who represented the most effective
12 witnesses knowledgeable of Scientology's behavior so that he would
13 get those clients to sign unconscionable settlement contracts
14 subjecting them to be sued if they ever testified as witnesses
15 again, Scientology is now able to systematically corrupt "an
16 effective and smoothly operating judicial system." (Id. at p.
17 215) ^{8/}

18 By virtue of threats of lawsuits, Scientology has eliminated
19 from the "open channels of communication" an entire genus of
20 judicially-credited and truthful witnesses knowledgeable about its
21 behavior and practices. Gerald Armstrong stands up against this,
22
23

24 ⁸ The Los Angeles Superior Court has recognized that the
25 settlement contract on which the instant case is based is corrupt.
26 Judge Geernaert stated: "[T]hat is ... one of the most ambiguous,
27 one-sided agreements I have ever read. And I would not have
28 ordered the enforcement of hardly any of the terms had I been
asked to, even on the threat that, okay, the case is not settled.
I know we like to settle cases. But we don't like to settle cases
and, in effect, prostrate the court system into making an order
which is not fair or in the public interest." (FAC at ¶ 45)

1 refusing to be used as a tool of corruption. (FAC at ¶ 43) ⁹

2 By way of retaliation, retribution, and punishment exemplar,
3 Scientology is attempting to destroy Armstrong and make an example
4 of him. It is doing so by using the settlement contract it got
5 Armstrong's attorney to make Armstrong sign as the lever to
6 Scientology's great litigation machine. That lever has been
7 pulled three times, causing Scientology to generate three lawsuits
8 against Armstrong using the fraudulent agreement as its cause.
9 The instant lawsuit is necessarily predicated on the settlement
10 contract. That contract is one of many. Each of the many
11 contracts does not allow the former witnesses "to testify or
12 otherwise participate in any other judicial, administrative or
13 legislative proceeding adverse to Scientology ... [and' shall not
14 make himself amenable to service of any such subpoena in a manner
15 which invalidates the intent of this provision." (Verified
16 Complaint herein, Exhibit A at ¶ 7-H, pp. 10-11) By virtue of

17 _____
18 ⁹ Before Armstrong made this determination, he endured
19 Scientology's continual attacks Armstrong after December 1986 when
20 the settlement contract was signed. It published a false and
21 unfavorable description of Armstrong in a "dead agent" pack. It
22 filed several affidavits in the case of Church of Scientology of
23 California v. Russell Miller and Penguin Books Limited, Case No.
24 6140 in the High Court of Justice in London England which falsely
25 accused Armstrong of violations of court orders, and falsely
26 labeled him "an admitted agent provocateur of the U.S. Federal
27 Government." It delivered copies of an edited version of an
28 illegally obtained 1984 videotape of Armstrong to the
international media (FAC at ¶ 41).

After Armstrong was subpoenaed to testify in the case of Bent
Corydon v. Scientology, Los Angeles Superior Court No. C 694401,
Scientology threatened Armstrong with lawsuits on six occasions if
he did not obey its orders to not testify regarding Scientology's
dark side. (FAC at ¶¶ 42-43) In the fall of 1989, right after
receiving a series of threats from organization attorney Lawrence
Heller, Armstrong, who had not earlier responded to Scientology's
post-settlement attacks, concluded that he was being used to
obstruct justice and that he had a right and a duty to not
obstruct justice. (FAC at p. 43)

1 contracts purchased through the corruption of counsel who
2 represented the signing parties, Scientology's objective is to
3 suppress, censor and exclude relevant evidence from truth-seeking
4 proceedings to which it is a party. And if one of those who
5 signed such a contract rejects its chains by vigorously
6 participating in "freedom of communication during all kinds of
7 truth-seeking proceedings," Scientology will sue him until he no
8 longer exercises "freedom of communication" in court proceedings
9 wherein it is a litigant.

10 Armstrong's first amended cross-complaint says such conduct
11 constitutes an abuse of process. For Scientology to sue Armstrong
12 because Armstrong has refused to go along with a contract that
13 Scientology compromised his former counsel to get Armstrong to
14 sign is not to achieve the objects of this litigation. It is to
15 intimidate him and to hold him up as an example by which to
16 intimidate others that is the most apparent object of this
17 litigation. The most insidious object of Scientology's litigation
18 strategy is to suppress and control the very values which make up
19 "the backbone to an effective and smoothly operating judicial
20 system." (*Id.* at p. 215.) This strikes at each of the reasons
21 which underlie the privilege that Scientology is asking this court
22 to use in order to throw out Armstrong's cross-complaint.

23 **2. The Privilege Does Not Apply Because The**
24 **Cross-Complaint Alleges That The Underlying**
Lawsuit Is Part Of A Plan To Destroy Evidence

25 Civil Code section 47 (b)(2) states that a publication in a
26 judicial proceeding is privileged except if the communication is

27 "made in furtherance of an act of intentional
28 destruction or alteration of physical evidence
undertaken for the purpose of depriving a party to

1 litigation to the use of that evidence, whether or not
2 the content of the communication is the subject of a
3 subsequent publication or broadcast which is privileged
4 pursuant to this section. As used in this paragraph,
5 'physical evidence' means evidence specified in Section
6 250 of the Evidence Code or evidence that is property of
7 any type specified in Section 2031 of the Code of Civil
8 Procedure."

9 In its fourth cause of action in its Verified Complaint For
10 Damages And For Preliminary And Permanent Injunctive Relief For
11 Breach Of Contract filed in Marin County Superior Court, Case No.
12 152 229 Scientology alleged:

13 "36. In addition to the paralegal
14 services which Armstrong has provided to Ford
15 Greene on the Aznarans' litigation, Armstrong
16 also provided the Aznarans with a declaration,
17 dated August 26, 1991, and filed in the
18 Aznaran's case. In that declaration Armstrong
19 describes some of his alleged experiences with
20 and concerning plaintiff, and purports to
21 authenticate copies of certain documents.
22 These actions and disclosures are violations
23 of Paragraphs 7(G), 7(H) and 10 of the
24 Agreement, requiring that Armstrong pay to CSI
25 and RTC \$50,000 in liquidated damages."

26 (Request for Judicial Notice, Exhibit D at p. 9) The Declaration
27 to which the language in Armstrong II refers is attached as
28 Exhibit F to the Declaration of Ford Greene Opposing Motion To
Exclude Expert Testimony filed in Aznaran v. Church of Scientology
of California, U.S. District Court, Central District of
California, Case No. CV-88-1786-JMI (Ex). (Request for Judicial
Notice, Exhibit E) Attached to Armstrong's Declaration are two
exhibits. Exhibit 1 is a letter from L. Ron Hubbard to the
Federal Bureau of Investigation. Exhibit 2 is one of thousands of
Scientology's technical bulletins. Hubbard brags that he knows
how to "brainwash faster than the Russians (20 secs to total
amnesia against three years to slightly confused loyalty)." Such

1 materials are those which fall within the scope of Evidence Code
2 section 250 and Code of Civil Procedure section 2031. Since the
3 complaint in the instant case is part of a scheme to retaliate
4 against Armstrong for participation in litigation in order to
5 destroy evidence by making it unavailable, it fall in the
6 exception to the litigation privilege.

7
8 **IV. THERE IS NOT ANOTHER PENDING CAUSE OF ACTION**
9 **THAT IS BASED ON THE UNDERLYING COMPLAINT BEING**
10 **AN ABUSE OF PROCESS AND A DECLARATION IS NEEDED**
11 **AS TO THE EFFECT OF THE SETTLEMENT CONTRACT ON**
12 **THE LITIGATION AT BAR**

13 Since the underlying action in this litigation was filed
14 after the cases that have been filed in Los Angeles, and since the
15 abuse of process cause of action in the first-amended cross-
16 complaint are directed at the complaint herein, Scientology
17 argument that the demurrer must be sustained because there is
18 another action pending between the same parties on the same cause
19 of action confounds reality. Thus, it should be rejected.

20 In light of the context of this litigation, and particularly
21 with respect to the role played by the settlement contract in
22 entitling plaintiffs to relief herein, declaratory relief is
23 imperative.

24 **V. CONCLUSION**

25 Based upon the foregoing, Armstrong respectfully submits that
26 the demurrer should be overruled and, if it is not, requests leave
27 to amend.

28 DATED: March 19, 1994

HUB LAW OFFICES

By: 

FORD GREENE

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PROOF OF SERVICE

I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: ARMSTRONG'S OPPOSITION TO DEMURRER TO FIRST AMENDED CROSS-COMPLAINT on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

LAURIE J. BARTILSON, ESQ.
Bowles & Moxon
6255 Sunset Boulevard
Suite 2000
Los Angeles, California 90028
(By Telecopier at 6:00 p.m.)

MICHAEL WALTON
P.O. Box 751
San Anselmo, California 94960

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: March 19, 1994